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DEC 02 2009

**OFFICE OF PETITIONS**

In re Application of :  
Butler et al. :  
Application No. 10/749,259 : DECISION ON PETITION  
Filed: December 31, 2003 :  
Attorney Docket No. COS-890 :

This is a decision on the petition filed February 11, 2009 to withdraw the holding of abandonment pursuant to 37 CFR 1.181(no fee).

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision should be submitted within two (2) months from the mail date of this decision and be entitled "Renewed Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181." *See* 37 CFR 1.181(f).

This above-identified application was held abandoned for failure to timely file a response after the Board of Patent Appeals and Interferences rendered a decision on the request for rehearing or reconsideration of the decision. The decision on the request for rehearing was mailed on December 23, 2008. A Notice of Abandonment was mailed on January 14, 2009.

Petitioner argues since the Board issued a decision on the Request for Reconsideration on December 23, 2008, the application is not abandoned until two months after the decision February 23, 2009.

Pursuant to 37 CFR §1.304, the time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 41.52(a), § 41.79(a), or §41.127(d) of this title, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. As such the Notice of Abandonment was mailed prematurely. However, further review of the record shows that a reply was not submitted prior to February 23, 2009.<sup>1</sup>

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<sup>1</sup> It is noted that pursuant to 37 CFR §1.304(b) since February 23, 2009 fell on Saturday a timely reply could have been submitted on February 25, 2009.

Thus, the application is now abandoned.

It is further noted that a petition for revival of the application would not be appropriate since applicants sought rehearing. "By proceeding in this manner, the appellant waives his or her right to further prosecution before the examiner." See. In re Greenfield, 40 F.2d 775, 5 USPQ 474 (CCPA 1930).

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop Petition  
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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



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